

## EXPEDITED SPCC SETTLEMENT AGREEMENT UNITED STATES ENVIRONMENTAL PROTECTION AGEN•CY REGION 7, 901 N. 5th St., KANSAS CITY, KANSAS 66101

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ENVIRORMED MIME PROTECTION AGENCY-REGION VII REGIONAL HEARING CLERK

Facility Name: NOX- Crete Manufacturing, Inc.

Location: 1444 S. 20th St., Omaha, NE 68108

Owner/Operator: Michael Linn

(Respondent)

On June 25, 2002, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection to determine compliance with the Oil Pollution Prevention (SPCC) regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act (33 U.S.C. § 1321(j)) (the Act), and found that Respondent had violated regulations implementing Section 311(j) of the Act by failing to comply with the regulations as noted on the attached Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form (Form), which is hereby incorporated by reference.

This proceeding and the Expedited Settlement are under the authority vested in the Administrator of EPA by Section 311(b) (6) (B) (i) of the Act, 33 U.S.C. § 1321(b) (6) (B) (i), as amended by the Oil Pollution Act of 1990, and 40 CFR § 22.13(b) and 22.18(b), published at 64 Fed. Reg. 40137 on July 23, 1999. The parties enter into this Expedited Settlement in order to settle the civil violations described in the Form for a penalty of §2.000.00. This settlement is subject to the following terms and conditions:

EPA finds that Respondent is subject to the SPCC regulations, which are published at 40 CFR Part 112, and has violated the regulations as further described in the Form. Respondent admits that he/she is subject to 40 CFR Part 112 and that EPA has jurisdiction over Respondent and Respondent's conduct as described in the Form. Respondent does not contest the Inspection Findings, and waives any objections it may have to EPA's jurisdiction. Respondent consents to the assessment of the penalty stated above. Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that the violations have been corrected and Respondent has sent a certified check in the amount of \$2,000.00 payable to the "Oil Spill Liability Trust Fund," to:

"Regional Hearing Clerk, Office of Regional Counsel, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101". Respondent has noted on the penalty payment check "CWA-07-2003-0119" and the docket number of this case.

(Do Not Make Check out to Hearing Clerk)

**DOCKET NO:** CWA-07-2003-0119

This Expedited Settlement resolves Respondent's liability for Federal civil penalties for the violations of the SPCC regulations described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by Respondent of the SPCC regulations or of any other federal statute or regulations. By its first signature, EPA ratifies the Inspection Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and is effective upon the Regional Judicial Officer's signature.

APPROVED BY EPA:

Date:

Chief, Emergency Plans and Response Branch,
Superfund Division

APPROVED BY RESPONDENT:

Name (print):

Michael A. Linn

Title (print):

Frequent

Signature:

IT IS SO ORDERED:

Regional Judicial Officer

Robert L. Patrick

INSTRUCTIONS ON REVERSE

Date Falor 4 Z

## INSTRUCTIONS

The United States Environmental Protection Agency ("EPA") has authority under Section 311 of the Clean Water Act to pursue civil penalties for violations of the Spill Prevention, Control and Countermeasures ("SPCC") regulations. However, EP encourages the expedited settlement of easily verifiable violations of SPC requirements, such as the violations cited in this Expedited Settlement Agreement

You may resolve the cited violations quickly by signing and returning the Expedited Settlement Agreement (Agreement) and paying the penalty amount within 3 days of your receipt of the Agreement. Failure to return the Agreement within the approved time does not relieve you of the responsibility to comply fully with the regulations, including correcting the violations that have been specificall identified by the inspector. If you decide not to sign and return the Agreement and not pay the penalty, EPA can pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$11,000 per violation up to a maximum penalty of \$27,500.

If Respondent does not sign and return this Expedited Settlement as presente within 30 days of the date of its receipt, the proposed Expedited Settlement i withdrawn without prejudice to EPA's ability to file any other enforcement actio for the violations identified in the Form.

You are required in the Agreement to certify that you have corrected th violations and paid the penalty amount. The payment for the penalty amount <u>mus</u> be in the form of a certified check payable to the "Oil Spill Liability Trus Fund," <u>with the Docket Number of the Expedited Settlement Agreement on the check</u> The Docket Number is located at the top of the right column of the Agreement.

The Agreement and Payment of the penalty amount shall be sent via <u>certified</u> mail to:

Regional Hearing Clerk Office of Regional Counsel U.S. Environmental Protection Agency 901 N. 5<sup>th</sup> Street Kansas City, Kansas 66101

By the terms of the Agreement, you waive your opportunity for a hearing pursuant to Section 311 of the Clean Water Act. EPA will treat any response to the proposed Agreement, other than acceptance of the settlement offer, as an indication that you are not interested in pursuing this expedited settlement procedure.

If you have any questions, you may contact the EPA Region 7 SPCC Complianc Coordinator at (913) 551-7251.

## Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, and Proposed Penalty Form

(Note: Do not use this form if there is no secondary containment)

These Findings, Alleged Violations and Penalties are issued by EPA Region 7 under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Clean Water Act, as amended by the Oil Pollution Act of 1990

Company Name	Docket Number: CWA			
	7 - 2 0 0 3 - 0 1 1 9 3 6			
Facility Name	Date			
NOX-Crete Manufacturing, Inc.	Date  June 25, 2002			
Address	Inspection Number			
1444 South 20th St.	F Y - 1 N S P - 0 2 - 0			
City:	Inspector's Name:			
Omaha	Wood Ramsey			
State: Zip Code:	EPA Approving Official:			
NE 68108	Scott Hayes			
Facility Contact:	Enforcement Contacts:			
Michael Linn	Bob Webber Phone Number: (913)551-72 51 Alan Hancock Phone Number: (913)551-7647			
GENERAL TOPICS: 112.3(d), (e); 112.5(a), (b), (c); 112.7 (b), (c), (d) (When the SPCC Plan review penalty exceeds \$1,000.00 enter only the maximum allowable of \$1,000.00.)				
No Spill Prevention Control and Countermeasure Plan				
Plan not certified by a professional engineer				
	300.00			
Plan not maintained on site (applies i	f facility is manned at least eight (8) hours per day)			
	plan by owner/operator			
No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential				
Amendment(s) not certified by a prof	ressional engineer			
Inadequate or no prediction of equipr	nent failure which could result in discharges			
	ntainment/diversionary structures/equipment			

	No contingency plan
	No written commitment of manpower, equipment, and materials
_	Written Procedures and Inspection Records 112.7(e)(8)
	Inspections required by 40 CFR Part 112 are not in accordance with written procedures developed for the facility
X	Written procedures and a record of inspections are not signed by facility supervisor
	Written procedures and a record of inspections are not made part of the plan
	Written procedures and a record of inspections are not maintained for three years
	Personnel Training and Spill Prevention Procedures 112.7(e)(10)
	No training on the operation and maintenance of equipment to prevent discharges
	No training on the applicable laws, rules, and regulations
	No designated person responsible for spill prevention
	Spill prevention briefings are not scheduled and conducted periodically
	Plan has inadequate or no discussion of personnel training and spill prevention procedures 50.06
	FACILITY DRAINAGE, ONSHORE (excluding Production Facilities) 112.7(e)(1)
	Valves used to drain diked areas are not of manual, open-and-closed design (note: flapper-type valves should not be used)
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	(note: flapper-type valves should not be used). 200.0  Pumps or ejectors not manually activated when diked storage areas drained 100.0  Drainage from undiked areas not into ponds, lagoons, or catchment basins, or no diversion systems to return spills to the facility. 300.0  Plan has inadequate or no discussion of facility drainage 50.0  BULK STORAGE TANKS (excluding Production Facilities) 112.7(e)(2)  Material and construction of tanks not compatible to the material stored and the conditions of storage such as pressure and temperature 300.0  Secondary containment appears to be grossly inadequate 500.0
	(note: flapper-type valves should not be used)

Wh	en drainage from diked areas is to a storm drain, open water course, or lake or pond:		
	Bypass valve not normally sealed closed		
	Runoff rain water not inspected and/or will cause a harmful discharge as defined in 40 CFR 110 300.00		
	Bypass valve is not opened and resealed under responsible supervision		
	Adequate records of drainage events are not maintained		
	Underground tanks are not protected from corrosion or are not subjected to regular pressure testing 100.00		
	Partially buried tanks do not have buried sections protected from corrosion		
	Aboveground tanks not subject to periodic integrity testing, such as visual, hydrostatic, and nondestructive methods, etc		
	Outside of tank not frequently observed for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked area		
	Steam return /exhaust of internal heating coils which discharge into an open water course not monitored, passed through a settling tank, skimmer, or other separation system		
	Records of inspections of aboveground tanks are not maintained		
	Tanks are not "fail-safe" engineered:		
	No audible or visual high liquid level alarm, or		
	No high-level pump cutoff devices set to stop flow at a predetermined tank content level, or 300.00		
	No direct communications between tank gauger and pumping station, or		
	No fast response system for determining liquid levels, such as computers, telepulse or direct vision gauges		
	No testing of liquid level sensing devices to ensure proper operation		
	Disposal facilities which discharge plant effluents directly to navigable waters are not monitored frequently to detect oil spills		
	Visible oil leaks resulting in accumulations of oil in diked areas are not promptly corrected 300.00		
	Mobile or portable storage tanks are not positioned to prevent spilled oil from reaching navigable water, or are in area subject to flooding		
	Secondary containment inadequate for mobile or portable storage tanks		
	Plan has inadequate or no discussion of bulk storage tanks 50.00		
FACILITY TRANSFER OPERATIONS, PUMPING, AND IN-PLANT PROCESSES, ONSHORE (excluding Production Facilities) 112.7(e)(3)			
$\overline{\mathbf{X}}$	Buried piping not corrosion protected with protective wrapping, coating, or cathodic protection 100.00		
	Corrective action not taken on buried piping when corrosion damage found		
	Terminal connections at transfer points on not-in-service or standby pipelines are not capped or blank-flanged and marked as to origin		

	Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction
	Aboveground valves and pipelines are not inspected regularly
	Periodic pressure testing of the valves and pipelines is not conducted
	Vehicle traffic not warned verbally or by appropriate signs of aboveground piping
	Plan has inadequate or no discussion of facility transfer operations, pumping, and in-plant processes 50.00
FAC	ILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING RACK, ONSHORE 112.7(e)(4)
$\overline{\mathbb{X}}$	Inadequate secondary containment, and/or rack drainage does not flow to catchment basin, treatment system, or quick drainage system
	Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck
	There is no interlocked warning light, physical barrier system, or warning signs to prevent vehicular departure before complete disconnect from transfer lines
	There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck
	Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack 50.00
SEC	URITY (excluding Production Facilities) 112.7(e)(9)
	Facility not fully fenced and entrance gates are not locked and/or guarded when plant is unattended or not in production
	Master flow and drain valves that permit direct outward flow of tank's contents to the surface are not secured in closed position when in a non-operating or standby status
	Starter controls on pumps are not locked in the "off" position or located at a site accessible only to authorized personnel when pumps are not in a non-operating or standby status
	Loading and unloading connection(s) of pipelines are not capped or blank-flanged when not in service. 50.00
	Facility lighting not commensurate with the type and location of facility to facilitate the discovery of spills during hours of darkness and to deter vandalism
	Plan has inadequate or no discussion of facility security
	TOTAL \$ 2,000.00

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IN THE MATTER OF Nox-Crete Manufacturing, Inc., Respondent Docket No. CWA-07-2003-0119

## CERTIFICATE OF SERVICE

I certify that the foregoing Expedited SPCC Settlement Agreement was sent this day in the following manner to the addressees:

Copy hand delivered to Attorney for Complainant:

Kristina Kemp Assistant Regional Counsel Region VII United States Environmental Protection Agency 901 N. 5th Street Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael A. Linn, President Nox-Crete Manufacturing, Inc. 1444 S. 20<sup>th</sup> Street Omaha, Nebraska 68108

Copy by First Class Mail to:

US. Coast Guard Finance Center (OGR) 1430A Kristina Way Chesapeake, VA 23326

Dated: 5/4/04

Kathy Robinson

Regional Hearing Clerk